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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,294	12/31/2003	Jung Hui Lin	BHT-3101-208	8402

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BRUCE H. TROXELL
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FALLS CHURCH, VA 22041

EXAMINER

MITCHELL, TEENA KAY

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 11/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/748,294

Applicant(s)

LIN, JUNG HUI

Examiner

Teena Mitchell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Information Disclosure Statement

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Drawings

The drawings are objected to because in claim 1, the cover sections and the loose section respectively cover the chins and nose of the wearer; however in the figures the cover sections and loose section cover only the nose and cheeks not the chin; the mouth shade body covers the chin as depicted in the figures.

In claim 9, the lower fastening strap being attachable to the attachable section of the upper fastening strap has not been depicted. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing

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should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

Claims 1 and 9 are objected to because of the following informalities: In claim 1, lines 9-11, "...the cover sections and the loose section respectively cover the chins and nose of the wearer..." however in the figures the cover sections actually are depicted covering the cheeks of the user not the chin, also because a person only has one chin (per-se) the claim language of "chins" is improper. Correction is required. If applicant's intention is that the cover sections and the loose section cover the cheeks of a user then the specification should also be amended as the specification basically states the same as the claims. If applicant's intention is that the cover sections and loose section covers the chin then applicant should provide a figure depicting such.

Claim 9, line 8, "...the upper elastic strap..." lacks antecedent basis.

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Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-9 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant throughout the specification makes reference to the cover and loose sections covering the chins; however in all figures it is depicted that the cover and loose sections actually only cover the cheeks not the chin of a user, therefore it is unclear as to if the cover and loose sections are suppose to actually cover the chin of a user or the cheeks of a user as the specification states one thing and the figures depict the opposite.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Roche (2,056,692).

Roche in a respirator discloses:

- a nasal body (A) formed of a flexible sheet, the nasal body (A) including
 - two cover sections (14) on two opposite sides of the nasal shade body;
 - a loose section (15) connected between the two cover sections (14); and
 - two ear string members (19) disposed on two sides of the cover sections (14),
- whereby when the ear string members are positioned in a specific position of the ears of a wearer, the cover sections and the loose section respectively cover the chins and nose of the wearer (Fig. 1), because the examiner does not know what applicant's real intention is with respect to the cover sections and loose section covering the chin the examiner contends that Roche is readable upon such limitations.

With respect to claim 4, Roche discloses wherein an edge of each of the cover sections (14) is formed with a vertical cut or passage (at 21), whereby the ear string member (19) can be conducted through the cut or passage.

With respect to claim 6, Roche discloses a mouth shade body (B), which is formed of a flexible sheet being connectable with a lower portion of the cover sections (14) of the nasal body (Fig. 1).

Claim Rejections - 35 USC § 103

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. **Ascertaining the differences between the prior art and the claims at issue.**
3. **Resolving the level of ordinary skill in the pertinent art.**
4. **Considering objective evidence present in the application indicating obviousness or nonobviousness.**

Claims 3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roche (2,056,692).

The difference between Roche and claim 3 is the loose section of the nasal body having a greater flexibility than the cover sections. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the loose section of the nasal body have a greater flexibility than that of the cover sections, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended user as a matter of design consideration. (In re Leshin, 227 F.2d 197, 125 USPQ 416). Also because the mask of Roche is adapted to fit sundry size and shape of noses, therefore having the loose section of a greater flexibility would provide the loose section to adapt to various shape and size nasal passages.

The difference between Roche and claim 5 is the cover section near the loose section has an oblique arched profile. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the cover section of Roche near the loose section have an oblique arched profile as a matter of design consideration because Roche discloses that any size of filtering material or casing as long as the cover sections and loose section cover the nose of a user (Page 2, col. 1, lines 26-37).

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Roche (2,056,692) in view of Schwartz (1,292,096).

The difference between Roche and claim 2 is the loose section composed of multiple separated layers including an outer facial layer and an inner facial layer and envelope defined between the layers and a filter material in the envelope.

Schwartz in a nasal mask teaches layers 12-16 and an envelope (50) providing an improved respirator to effectively prevent deleterious matter from being inhaled by a user and to insure free breathing (Page 1 col. 1, lines 9-21).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the loose section of Roche to employ any well known layers and envelope with a filter material doing so would have provided an improved respirator to effectively prevent deleterious matter from being inhaled by a user and to insure free breathing including the inner, outer layer and envelope with a filter material taught by Schwartz.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Roche (2,056,692) in view of Ritchey et.al. (5,067,174).

The difference between Roche and claim 7 is a rigid socket or press hole disposed on a lower portion of the cover sections and/or loose section for detachably connecting the mouth shade body and the nasal shade body.

Ritchey in a mask teaches rigid socket (19) for connecting a visor and mask providing an easily fabricated or to be easily separated (Col. 3, lines 13-17).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the nasal and mouth shade body of Roche to employ any well known rigid socket doing so would have provided a means to connect the mouth shade body to the nasal shade body which is easily fabricated or easily separated including the rigid socket taught by Ritchey.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Roche (2,056,692) in view of LeDuc (2,556,589).

The difference between Roche and claim 8 is the mouth shade body formed with an exposed or hidden open lined layer for a lower fastening strap to pass through.

LeDuc in a mask teaches exposed or hidden open lined layers for a fastening strap to pass there through (Figs. 2-8).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the strap holding means of Roche to employ any well known exposed or hidden open lined layer for a fastening strap to pass through as mere substitutions one strap holding means for another because they both would do the same thing, which is holding the mouth shade body on a user's head.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The balance of art is cited to show nasal respirators:
2004/0078860; 2004/0118405; 6,338,340; 5,794,276; 5,717,991; 5,706,804; 5,628,308;
5,035,006; 4,628,927; 3,101,709; 2,16,607; 1,150,991; 2,056,692; 1,292,096.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Teena Mitchell whose telephone number is (703) 308-4016. The examiner can normally be reached on Monday-Friday during normal business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (703) 308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Teena Mitchell
Examiner
Art Unit 3743
October 25, 2004